



October 1, 2003

Highlights of the Conference Report to Accompany S. 3, Partial-Birth Abortion Ban Act of 2003

The Conference Report, H. Rept. 108-288, was filed on September 30, 2003.

NOTEWORTHY

- The Senate passed S. 3 on March 13 by a vote of 64-33, after approving (on March 12) the Harkin amendment regarding *Roe v. Wade* by a vote of 52-46. The Harkin Amendment was a Sense of the Senate that *Roe* was “appropriate and secures an important fundamental right” and “should not be overturned.”
- When the House took up S. 3 on June 4, it substituted text (H.R. 760) that did not include language referencing *Roe v. Wade*. The vote on final passage was 282-139.
- The Conference Committee made two changes to the Senate-passed bill: it removed the Harkin Amendment; and it made minor changes to the bill’s findings, in particular by making the description of the partial-birth procedure more detailed.

HIGHLIGHTS

The following are key portions of the Conference Report (the text of which is the same as the Senate-passed bill).

The Bill Affects a Narrowly Defined Set of Abortions

S. 3 prohibits the performance of a partial-birth abortion, which is specifically defined in the bill as “an abortion in which the person performing the abortion: 1) deliberately and intentionally vaginally delivers the living fetus until, in the case of a head-first presentation, the entire fetal head is outside the mother’s

body, or, in the case of a breech presentation, any part of the fetal trunk past the navel is outside the mother's body; and 2) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus."

- According to this definition, the prohibition established in S. 3 would *not* apply to abortions performed by Caesarian section or hysterotomy (i.e., where the fetus is not extracted vaginally); or to abortions in which the fetus is killed *prior* to being moved into the birth canal.
- The person performing such an abortion would be subject to fines or imprisonment of up to two years, or both. The mother of the aborted fetus is explicitly exempted from prosecution. In addition, the person performing the abortion is liable for civil damages to the father of the aborted child and, if the mother is under 18 years old, the maternal grandparents of the child.
- The prohibition does not apply to a partial-birth abortion that is "necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury."

The Bill Addresses Constitutional Concerns

S. 3 has been crafted to ensure its constitutionality in light of the Supreme Court's ruling in *Stenberg v. Carhart* (2000), which struck down Nebraska's partial-birth abortion ban. The Supreme Court held that the statute unduly burdened a woman's constitutional right to choose abortion because it (a) contained no health-of-the-mother exception in light of the district court findings in that case, and (b) could be construed to apply to a broad range of abortion procedures rather than just the partial-birth abortion targeted in S. 3. However, the Court expressly held that the Constitution does not give doctors "'unfettered discretion' in their selection of abortion methods." 530 U.S. at 937.

- S. 3 contains numerous findings demonstrating that partial-birth abortion is never necessary to protect the health of the mother, obviating the need for a health-of-the-mother exception.
- S. 3 defines "partial-birth abortion" much more narrowly than did that Nebraska statute so that it will not be misinterpreted to extend beyond the narrow circumstances intended.